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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,892	03/19/2004	Eric W. Smith		8196

7590

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/804,892	Applicant(s) SMITH ET AL.	
	Examiner Frederick C. Nicolas	Art Unit 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/19/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter in claim 7, lines 1-2, "said cured polyurethane product into a water leak to seal said leak" and the claimed subject matter in claims 8-9, "wherein said leak is up to about 150 gallons per minute or higher" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- the phrase "plug-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2,4 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobsen et al. 5,443,183.

Jacobsen et al. disclose a device for dispensing a product resulting from mixing at least two liquid substances as seen in Figure 1, which comprises an elongated sheath (16), a dispensing orifice (18), a check valve (10) having at least one exit opening (52a, 52b), a closing element (57), a static mixer (17), a feeding system (12a, 12b).

The device shown by Jacobsen et al. will perform the method recited in claim 5 during normal operational use of the device.

6. Claims 1-2,4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Books et al. 4,117,551.

Books et al. disclose a device for dispensing a product resulting from mixing at least two liquid substances as seen in Figure 1, which comprises an elongated sheath (70A), a dispensing orifice (72A), a check valve (150) having at least one exit opening (164), a closing element (152), a static mixer (71A), a feeding system (16, 17).

The device shown by Books et al. will perform the method recited in claim 5 during normal operational use of the device.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Books et al. 4,117,551 in view of Gerich 4,549,676.

Books et al. have taught all the features of the claimed invention except that the closing element comprises a rod having a shaft. Gerich teaches the use of a check valve (34a, 34b) having a rod (40) and shaft (38).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the check valve of Books et al. with Gerich's check valve, in order to provide an alternate equivalent means of providing a check valve.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Books et al. 4,117,551 in view of Morano et al. 5,615,949.

Books et al. have taught all the features of the claimed invention except that the substances comprise polymethylene polyphenyl isocyanate and 4,4 diphenylmethane diisocyanate. Morano et al. teach the use of polymethylene polyphenyl isocyanate and 4,4 diphenylmethane diisocyanate in a static mixer () (col. 8, ll. 45-67 onto col. 9-10, ll. 1-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the substances of Books et al. with the substances of Morano et al. as such, in order to produce a filled foamed isocyanate-based polymer, as taught by Morano et al. in (col. 6, ll. 34-35).

9. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Books et al. 4,117,551 in view of Morano et al. 5,615,949 as applied to claim 6 above, and further in view of McCabe et al. 5,342,149.

Books et al.-Morano et al in combination have taught all the features of the claimed invention except that the polyurethane product being dispensed into a water leak. McCabe et al. teach the use of dispensing a polyurethane product into a water leak (col. 5, ll. 13-21).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teaching of McCabe et al. onto the device of Books et al. and Morano et al., in order to inject grout to seal cracks and crevices which occasionally develop in a variety of structures, such as leaking water through the cracks that develop, as taught by McCabe et al. in (col. 1, ll. 14-18).

With respect to claim 8, the claimed subject matter "said leak is up to about 150 gallons per minute", as well as the claimed subject matter in claim 9. Such leak (150 gallons per minute) represents an obvious matter of choice to a person having ordinary skill in the art merely dependent upon the characteristics or capabilities of the leak through the cracks.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Boden et al. 4,030,637, Radovich et al. 6,034,147, Keller 6,029,857, Centea 5,092,492, Khosla 5,225,168 and Morris et al. disclose other types of dispensing device.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
January 7, 2004



Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754